

partitionee must either certify: (1) that it will meet the applicable performance requirements; or, (2) the original licensee may certify that it has met the five year requirements and will meet the applicable ten year requirements. Under the second option, a partitionee need not satisfy any performance requirements at all. Presumably, under the second option, and under the Commission's "substantial service" standard (discussed in Section II(C) above) a licensee could provide service to 20% of the population of the license area within five years, and then partition up to 80% of the pops of that license. Under this scenario, the partitionee would have no further obligation to construct. Such minimal performance requirements do not encourage the rapid deployment of narrowband PCS and do not meet the mandate of Section 309(j).

Instead, each party should be required to meet the applicable performance requirements for their partitioned areas. This will also avoid confusion and an inequitable result if a partitionee relies on the original licensee to meet build-out requirements, and the original licensee fails to fulfill its obligation.

With respect to partitioning and installment payments, the Commission proposes dividing installment payments on a *pro rata* basis when a qualifying designated entity partitions to another qualifying designated entity.⁵³ This may, however, have the effect of stifling partitioning because it may effectively prohibit partitioning for niche services that generate small amounts of revenue. In order to allow as much flexibility as possible and allow the market place to determine what services are offered, the Commission should allow the parties to allocate the payment of installment payments between them. Specifically, when a qualifying designated entity partitions to another entity that also would qualify for installment payments, the two parties should be able

⁵³ *Id.* at ¶ 93.

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⁵³ *Id.* at ¶ 93.

to allocate the division of the installment payments and certify to the Commission how the payments will be allocated. If a qualifying party partitions to a non-qualifying party, then the Commission can require the non-qualifying party to pay its entire *pro rata* share.

III. CONCLUSION


The narrowband PCS proposals contained in the *FNPRM* generally fail to provide designated entities with an opportunity to provide narrowband PCS. Specifically, the Commission's lack of designated entity provisions for rural telephone companies violates Section 309(j) of the Act. The Commission's proposal to combine smaller license areas into larger license areas also will discourage participation by designated entities. By combining BTA/MTA areas into larger license areas without a corresponding increase in bidding credits, the Commission will place narrowband PCS beyond the financial reach of virtually all designated entities.

The Commission's proposed modification of the narrowband PCS performance requirements also violates Section 309(j) of the Act by effectively eliminating meaningful performance requirements and failing to ensure the rapid deployment of narrowband PCS to rural America. Finally, the Commission's proposed bidding credits are too low to ensure designated entity participation.

In order to provide rural telephone companies and other designated entities a meaningful opportunity to provide narrowband PCS, RTG respectfully requests that the Commission adopt the proposals contained herein.

Respectfully submitted,

THE RURAL TELECOMMUNICATIONS GROUP

By: 

Caressa D. Bennet
Gregory W. Whiteaker

Bennet & Bennet, PLLC
1019 Nineteenth Street, NW
Suite 500
Washington, D.C. 20036
(202) 530-9800

Its Attorneys

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CERTIFICATE OF SERVICE

I, Caroline Hill, an employee in the law firm of Bennet & Bennet, PLLC, hereby certify that a copy of the foregoing Comments were served, via hand delivery this 18th day of June, 1997 to the following:

Gretchen Rubin
Counsel to the Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Rudy Baca
Legal Advisor
Office of Commissioner Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

David Siddall
Office of Commissioner Ness
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554\

Suzanne Toller
Office of Commissioner Chong
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

Robert Pepper, Chief
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Daniel Phythyon, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

Jonathan V. Cohen, Associate Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

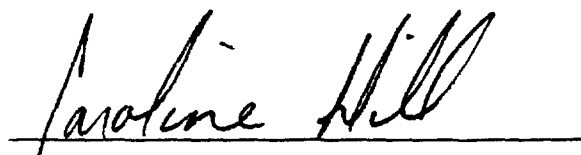
Gerald P. Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

Kathleen O'Brien Ham, Chief*
Auctions Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5326
Washington, DC 20554

David Furth, Chief*
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, DC 20554

Catherine Sandoval, Director
Office of Communications Business
Opportunities
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, D.C. 20554

S. Jenell Trigg*
Office of Advocacy
U.S. Small Business Administration
409 3rd Street., S.W.
Washington, D.C. 20416



Caroline Hill